

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE,

Plaintiff,

-against-

YESHIVA UNIVERSITY,
ANDREW “AVI” LAUER, ESQ.,
CHAIM NISSEL, SEYFARTH SHAW, LLP, AND
DOV KESSELMAN, ESQ.,

Defendants.

Docket No.: 1:22-cv-05405-PKC-KHP

**SUR-REPLY MEMORANDUM OF LAW OF YESHIVA UNIVERSITY, ANDREW
“AVI” LAUER, ESQ., AND CHAIM NISSEL IN FURTHER RESPONSE TO
PLAINTIFF’S MOTION FOR LEAVE TO PROCEED IN THIS
ACTION UNDER A PSEUDONYM**

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As stated in their Response to Plaintiff's Motion for Leave to Proceed in This Action Under a Pseudonym [Dkt. No. 58], the Yeshiva Defendants take no position with regard to Plaintiff's Motion and note the arguments raised by the Seyfarth Defendants in their Sur-reply [Dkt. No. 83].

The Yeshiva Defendants acknowledge the legal arguments made by the Seyfarth Defendants in their Sur-Reply Memorandum with respect to the affidavit of Plaintiff's psychotherapist attached to the Reply [Dkt. No. 71-1]. The Yeshiva Defendants agree that the affidavit of a Licensed Master Social Worker ("LMSW") is insufficient under the *Sealed Plaintiff* factors.¹

The Yeshiva Defendants also acknowledge the legal arguments made by the Seyfarth Defendants in their Sur-Reply Memorandum with respect to the multiple articles attached to Plaintiff's Reply concerning the abuse of children in certain ultra-Orthodox Jewish communities [Dkt. Nos. 71-2 through 71-6]. The articles are not relevant to Plaintiff's circumstances and provide no admissible evidence in furtherance of the *Sealed Plaintiff* factors.

CONCLUSION

For the foregoing reasons, the Yeshiva Defendants continue to take no position with regard to Plaintiff's Motion to Proceed in this Action Under a Pseudonym, and submit that the additional evidence provided by Plaintiff is insufficient according to the applicable case law.

¹ The Yeshiva Defendants would like to direct the Court's attention to a number of cases in other contexts where New York Courts have discussed the insufficiency of an affidavit from an LMSW. *See People v. Compasso*, 35 Misc. 3d 1201(A), 2012 N.Y. Misc. LEXIS 1293 (Sup. Ct. Suffolk Cty. Feb. 14, 2012) (explaining that an LMSW is not qualified to make a diagnosis, and there was no evidence that the LMSW was working under the direction of a psychiatrist, psychologist, or LCSW for the diagnostic evaluation); *Five Boro Psychological Servs. v. GEICO Ins. Co.*, 31 Misc. 3d 1227(A), 929 N.Y.S.2d 199 (Civ. Ct. Kings Cty. 2011) (LMSW was not qualified to make a diagnosis and did not qualify as an expert, especially where there was no testimony that he worked under an LCSW); *Mojica v. Berryhill*, 397 F. Supp. 3d 513 (S.D.N.Y. 2019) (reviewing a Social Security disability claim, and finding a social worker may provide relevant evidence, but is not an "acceptable medical source" and their opinions or assessments are not controlling).

Date: New York, New York
December 20, 2022

Respectfully submitted,

MORRISON COHEN LLP

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